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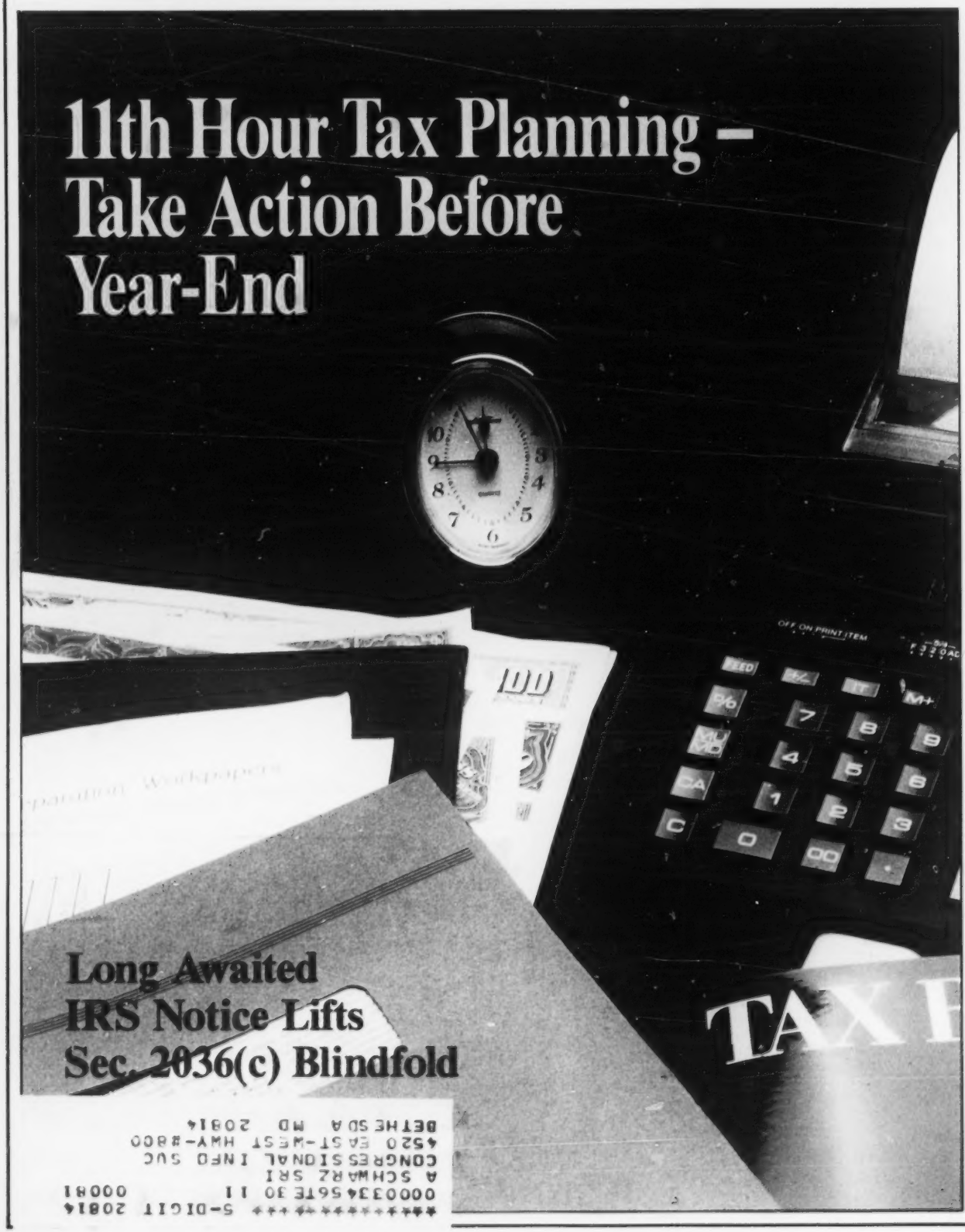

11th Hour Tax Planning – Take Action Before Year-End

Long Awaited IRS Notice Lifts Sec. 2036(c) Blindfold

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TRUSTS & ESTATES®

Volume 128, No. 11 Estate Planning and Administration Since 1904 NOVEMBER 1989

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Time is running out. The end of the year is fast approaching. Start wrapping up your estate planning loose ends. Cover photo courtesy of Jos Palmieri, Augusta, N.J.

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Commentary

Last Minute Reminders At Yearend

By the time you receive this issue of TRUSTS & ESTATES precious little time will be left to tie up loose estate planning ends before the end of the year. So, this month, we are issuing some reminders for practioners who want to take care of important planning techniques before the clock strikes midnight on December 31st.

January 1, 1990 is the deadline for establishing a Gallo Trust. So, now is the time to act on this technique, which is used to protect transfers to a trust from the generation-skipping transfer tax. In his article, Sam Radin, president of the National Madison Group in New York, tells us how.

Now also is the time to make any changes to existing douments for taxpayers affected by Secs. 2056(d) and 2056(A) since these Code sections disallow an estate tax marital deduction unless the decedent's surviving spouse is a U.S. citizen or the property passes into a qualified domestic trust. William Diss of Ernst & Young in New York takes us through the nuts and bolts of QDTs.

Also this month, the much-anticipated clarification from the IRS on Sec. 2036(c) has been issued and, in a two-part article starting this month, Roy Adams, David Herpe and Harmon Brown of Schiff Hardin & Waite in Chicago analyze the Notice and discuss which questions have been answered and which have not.

While we are able to cover only three areas of estate planning in this month's issue, there are, without question, many more problems that are perplexing practitioners today. That is why we would like to take this opportunity to invite you to attend the TRUSTS & ESTATES 1st Annual Conference on Estate Planning, February 7,8, and 9 in San Francisco where some of the most knowledgeable people in the estate planning and administration field will offer in-depth analyses of the laws and regulations governing your day-to-day practice. Plan now to attend this very important event. For further information see the brochure included in this month's issue.

Part 2

Looking Deeper Into The New IRS Data Base

The Great Depression and World War I are just two of the events that have had an impact on wealthy decedents and their portfolios

By **JANET G. McCUBBIN**
and
JEFFREY P. ROSENFELD
Internal Revenue Service
Washington, D.C.

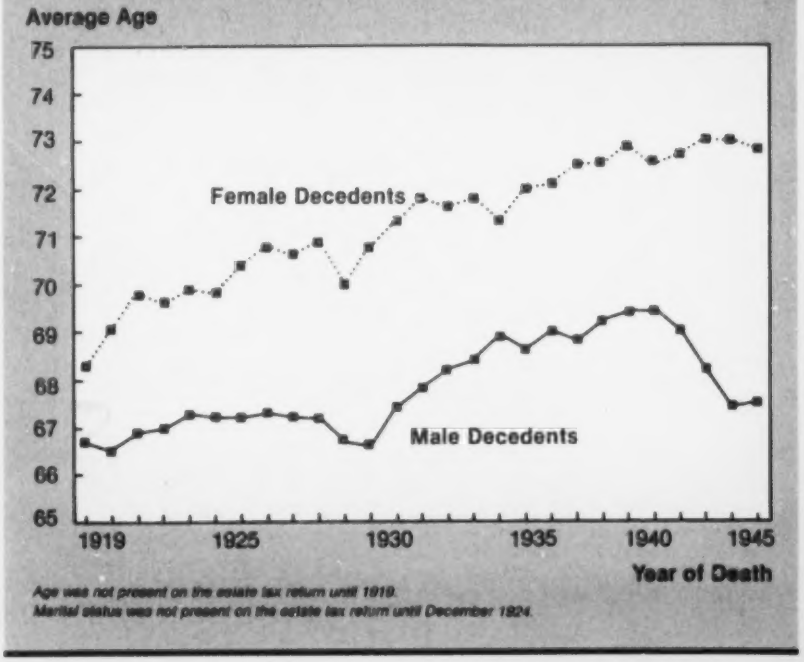
This is the second in a series of articles describing an Internal Revenue Service data base of interest to estate planners. This IRS data base now contains information from nearly 500,000 estate tax returns filed for individuals who died between 1916 and 1950. It already includes data from virtually all returns filed between 1916 (the inception of the estate tax) and 1945, the period reviewed in this article. IRS eventually will code information from every estate tax return, making this perhaps the most comprehensive computerized archive of data on intergenerational transfers ever compiled.[1]

The data collected for this project, which IRS calls the Intergenerational Wealth Study, generally includes the demographic information present on the estate tax return, such as the decedent's name, age, sex and marital status. Financial data collected includes information on the size of the gross estate, the indebtedness of the decedent, the estate tax due and, from a sample of returns, the types and dollar value of assets in the estate. The data base also contains information on the distribution of each estate, including the amount of charitable bequests, an indication of whether or not the decedent was testate and each beneficiary's name, sex and relationship to the decedent. The identifying information on decedents and beneficiaries will permit the linkage of family members and allow researchers to study the ways in which wealth is transferred from generation to generation.

The previous article, "Introducing an IRS Data Base for Estate Tax Research" (TRUSTS AND ESTATES, March 1989, pp. 62-66), described the scope of the Intergenerational Wealth Study and included a preliminary analysis of data for the years 1916-31. The data for that period showed the impact that social and demographic change can have on estate planning. The First World War and the beginning of the Great Depression, for example, are two events reflected in the estate tax data from that period. In this article the analysis is extended through 1945; the five main findings include:

- The Great Depression altered the distribution of wealth and marked a turning point in U.S. economic history.
- The sharp drop in the number of mil-

FIGURE 1
Average Age of Wealthholders by Sex, 1919-1945



Age was not present on the estate tax return until 1919.
Marital status was not present on the estate tax return until December 1924.

lionaire decedents occurring between 1929 and 1931 continued through 1932, after which the number of millionaires generally increased. A continually increasing percentage of millionaire dececents were women.

• The average gross estate of these decedents generally did not increase, and in 1945 actually was less than the average gross estate of millionaire decedents in 1932. Stock remained the predominant asset in millionaire portfolios, totaling 50.5 percent of the total gross estate from 1931-45. The percentage of assets held as real estate continued to decline, falling to only 6.1 percent by 1945. Life insurance became a more important part of the total gross estate.

• The average age of all wealthy decedents continued to rise, particularly for women, and an ever increasing percentage of these wealthy decedents were women.

• Decedents left nearly $4 billion in charitable bequests from 1916-45, and more than 40 percent of charitable donors were women. This analysis and the data collection for the Intergenerational Wealth Study is far from complete, but the data base already reveals insights about wealthy decedents, their portfolios and their estate plans.

The number of estate tax returns filed annually increased in most years. Notable exceptions to that trend include 1926 and 1942, when the filing requirement was raised, and 1929-31 the early years of the Great Depression. Table 1 shows how the number of wealthy decedents grew during the first 30 years of the estate tax and reveals that women constituted a growing segment of the wealth-holding population. The portion of total gross estate held by women increased even more, rising from 21 percent for 1916-20 to 32.5 percent by 1941-45.

As might be expected, decedents who were wealthy enough to be subject to the estate tax had lived longer, on average, than decedents in the U.S. population at large. Table 2 shows the mean age at death of wealth-holders in 1920, 1930 and 1940. At all three points in time these wealthy decedents had lived longer than people in the overall U.S. population, which was true for both men and women, although Figure 1 reveals that wealthy women lived longer than wealthy men. The average age at death of wealth-holders increased from 1916 to 1945, especially for women. Men actually experienced a dip in average age from 1941-44 (probably due to casualties of World War II) so that by 1945, women lived an average of 5.4 years longer than men.

The average total gross estate of female decedents generally was lower than that of males (see Figure 2). This discrepancy was greatest when average total gross estate was at its peak, just before the Great Depression. The difference between the filing requirement and average gross estate also was greatest during 1929, when the estate tax filing requirement was at a high of $100,000

FIGURE 2

Federal Estate Tax Filing Requirement and Average Total Gross Estate of Wealthholders by Sex, 1916-1945

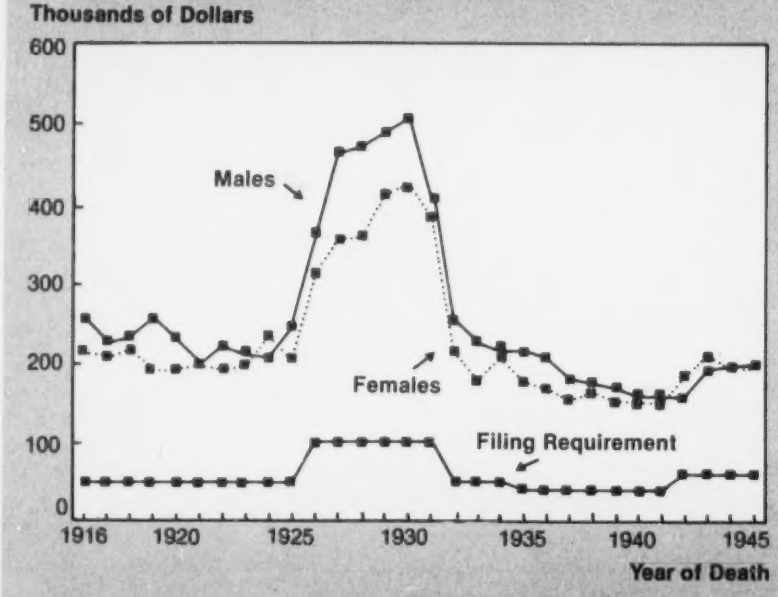


TABLE 1

Number of Decedents by Sex, 1916-1945

Years of Death	Number	Percent of Decedents* Male	Female
1916-1920	44,050	73.5	23.8
1921-1925	64,063	72.6	26.5
1926-1930	42,073	71.8	28.1
1931-1935	49,397	67.8	32.0
1936-1940	82,145	65.2	34.8
1941-1945	89,055	67.0	32.9

*The gender of a small percentage of decedents, 0.5 percent overall, is unknown.

TABLE 2

Average Age of Wealthholding Decedents Compared to the Average Age of Decedents in the Overall U.S. Population

Year of Death	Wealthholders Men	Women	U.S. Population* Men	Women
1920	66.5	69.1	53.6	54.8
1930	66.6	70.8	58.1	61.8
1940	69.4	72.9	60.8	65.2

*Source: U.S. National Center for Health Statistics, U.S. Life Tables and Actuarial Tables, 1820-1940.

TABLE 3

Number and Average Total Gross Estate (TGE) of All Wealthholders with Total Gross Estates of $100,000 or more

	All Decedents		Decedents with $100,000 or More	
Years of Death	Number	Average TGE	Number	Average TGE
1916-1920	44,050	$227,047	20,980	$401,281
1921-1925	64,063	212,169	30,662	369,530
1926-1930	42,073	431,838	36,584	464,331
1931-1935	49,397	240,652	27,881	375,002
1936-1940	82,145	169,741	30,103	360,100
1941-1945	89,055	179,449	40,504	314,568

TABLE 4

The Number and Average Total Gross Estate (TGE) of Millionaire Decedents, 1916-1945

Years of Death	Number	Percent of All Decedents	Average TGE
1916-1920	1,201	2.7	$3,052,243
1921-1925	1,692	2.6	2,497,380
1926-1930	2,953	7.0	2,886,913
1931-1935	1,564	3.2	2,527,599
1936-1940	1,575	1.9	2,568,322
1941-1945	1,668	1.9	2,313,454

TABLE 5

Millionaire Decedents by Sex, 1916-1945

	Percent of Millionaires*	
Years of Death	Male	Female
1916-1920	79.6	18.7
1921-1925	75.1	24.3
1926-1930	76.7	23.3
1931-1935	73.9	26.0
1936-1940	69.2	30.8
1941-1945	66.3	33.7

*Total may be less than 100 percent as gender is unknown for a small number of decedents.

TABLE 6

Selected Assets as a Percentage of Total Gross Estate of Millionaire Decedents, 1916-1945

Selected Assets	Years of Death					
	1916-20	1921-25	1925-30	1931-35	1936-40	1941-45
Corporate Stock	49.9	48.6	59.5	48.2	51.4	51.8
Real Estate	13.7	13.6	10.2	9.4	6.1	6.1
Life Insurance	0.6	0.8	1.2	1.9	1.3	2.1

and the average total gross estate was $465,740. The gap was smallest in 1941 when the filing requirement was at a low of $40,000 and the average total gross estate was at a low of $153,667.

The first article in this series focused on 1916-31, bringing us to the beginning of the Great Depression, an economic disaster that did not end until World War II. During the throes of the Depression, the value of all market securities dropped by more than 80 percent, net national product decreased by half, and, despite President Herbert Hoover's efforts to enlist the cooperation of private businesses, investment plummeted.[2] Table 3 shows that the average value of total gross estate (TGE) of decedents with $100,000 or more dropped by more than 19 percent between the 1926-30 and 1931-35 periods. (Only decedents with $100,000 or more are compared to account for differences in the estate tax filing requirement.[3]

Hoover's successor, Franklin Delano Roosevelt, combatted the economic crisis with government financing for troubled businesses, work relief, banking reform, agricultural price reform and other programs. Net national product did increase by 12 percent annually from 1933 to 1937; but in 1937, more than 14 percent of the civilian labor force still was unemployed.[4] It had become apparent that the United States could not expect to enjoy unbounded economic growth, and long-term investment languished, due largely to a persistent lack of confidence on the part of the business community. The decline in the average value of total gross estate evidenced in Table 3 continued through 1942.

World War II, accompanied by spiraling U.S. military expenditures and an increased demand for American agricultural and manufacturing products, finally brought an end to the Depression. The number of decedents with $100,000 or more in 1941-45 increased by nearly 35 percent over the previous five years. Yet the average gross estate for these decedents did not increase, and by 1941-45, the distribution of total gross estate among these decedents looks quite different than it did during 1926-30. From 1926 to 1930, 30.7 percent of these decedents owned between $100,000 and $150,000 in total gross estate, and 18.2 percent had estates worth $500,000 or more. By the years 1941-45, 41.1 percent had estates worth between $100,000 and $150,000, and only 11.6 percent had $500,000 or more.

Very wealthy decedents experienced a

decline in the average value of their estates similar to that in the overall decedent population. Even more striking is the sharp decline in the number of very wealthy decedents at the onset of the Depression (see Table 4). In 1929, more than 8 percent of all wealth-holding decedents had estates worth $1 million or more. By 1938, less than 2 percent of all decedents and just 5.3 percent of decedents with $100,000 or more were millionaires. Despite fluctuations in the number of male and female millionaires, the percentage of female millionaires increased steadily. Table 5 shows that women went from 18.7 to 33.7 percent of all millionaires. In 1945, 2.3 percent of female decedents were millionaires, but only 2.0 percent of male decedents were that wealthy.

The asset composition of the portfolios of millionaires also changed between 1916 and 1945. Some of these changes are apparent in Table 6, which shows the percentage of total gross estate comprised of corporate stock, real estate and life insurance. Corporate stock always is an important asset, although its value declined at the onset of the Depression. Real estate, however, dropped from 13.7 percent to only 6.1 percent of millionaires' gross assets.

The percentage of total gross estate consisting of life insurance generally increased from 1916 to 1945. The actual value of life insurance prior to 1943 is slightly understated due to the exemption of up to $40,000 of insurance on the life of the decedent, payable to a beneficiary other than the estate or executor. (This exemption was eliminated in October 1942.) Yet even after accounting for this inconsistency in the tax law, life insurance as a percentage of gross estate was higher during 1941-45 than in previous years.

The data suggests that nearly all wealth-holders worked with estate planning professionals by the end of this period. The number of intestate decedents declined from about 27 percent in 1920 to about 16 percent by 1945. Table 7 reveals that a greater percentage of women were testate than men, even though men generally were wealthier. Perhaps because women generally live longer than men, they have more time to make estate plans. Because women are more often testate, and because they constituted an increasing percentage of decedents over this period, they accounted for nearly a third of all testate decedents by 1945.

The number of decedents who donated a portion of their estate to charity increased over the period, from 3,429 wealth-holders who died during 1916-20 to 14,884 who died from 1941-45. As shown in Figure 3, however, the percentage of decedents making charitable bequests peaked during 1926-30, at just under 22 percent. "It is more blessed to give than to receive," goes the old saying; but the percentage of decedents making charitable bequests slid from 21.8 to 19.1 percent during the next 5 years and it fell again, to 17.6 percent for 1936-40.

Despite fluctuations in the number of male and female millionaires, the percentage of female millionaires increased steadily.

From 1916 through 1945, more than 61,000 wealth-holders bequeathed a total of nearly $4 billion to charities. Variations in the size of average bequests, which ranged from a high of more than $205,000 in 1919 to less than $41,000 in 1940, generally followed fluctuations in average total gross estate

TABLE 7

Percentage of Decedents Who Were Testate by Sex, 1920-1945

Years of Death	Percent Testate	
	Male	Female
1920*	70.9	76.8
1921-1925	76.4	79.8
1926-1930	84.5	85.3
1931-1935	85.3	85.9
1936-1940	83.3	85.4
1941-1945	82.9	86.4

*An indication of whether or not the decedent was testate did not appear on the Federal estate tax return until August 1919.

FIGURE 3

Percentage of Decedents Who Made Charitable Bequests by Sex, 1916-1945

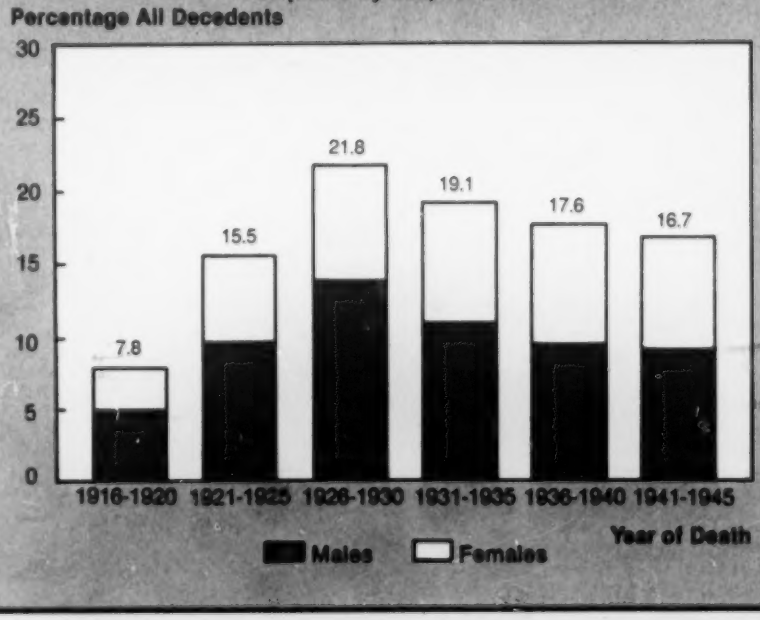
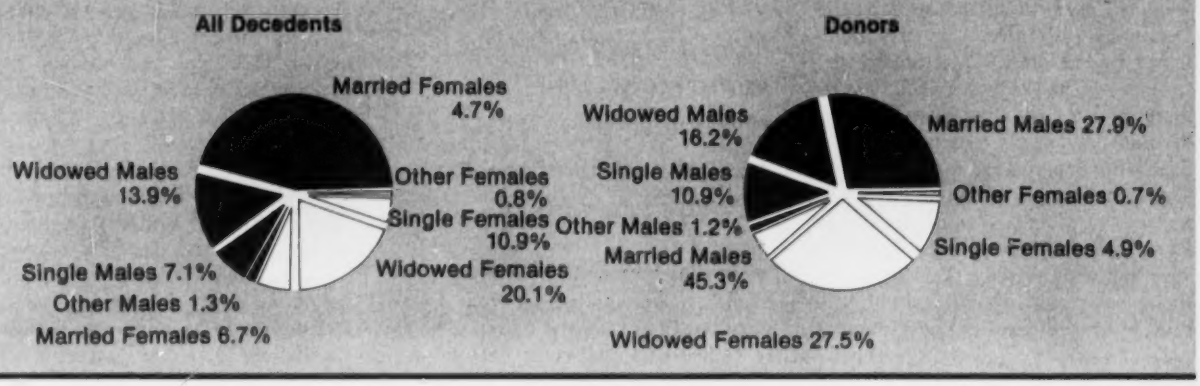


FIGURE 4

Sex and Marital Status of All Decedents and of Charitable Donors, 1925*-1945



and the estate tax filing requirement. Table 8 shows the number of donors, total bequests, the average size of bequests and average total gross estate of charitable donors for 1916 through 1945. It also provides data on the amount of charitable contributions deducted from individual income tax returns. Beginning in 1917, charitable contributions of up to 15 percent of net income (before taking charitable and medical deductions) and of up to 15 percent of adjusted gross income (for 1944 and 1945) were deductible. Like charitable bequests, charitable deductions from income peaked during 1926-30 and fell during 1931-35; charitable deductions, however, increased after that. The huge increase beginning around 1940 is due in large part to a decrease in the Federal income tax filing requirement, which dropped from $5,000 in gross income for 1921-32 to $500 in gross income by 1944 (evidence of the federal government's larger role in the U.S. economy).

Perhaps the most striking characteristic of the decedents who donated to charities is that nearly 43 percent of them were women, although women comprised only 30 percent of all decedents during this period. From 1916 to 1945, 23 percent of women, but less than 14 percent of men left bequests to charity. This may be because women, who generally outlive their husbands, do not need to provide for a surviving spouse, and so have the freedom to make charitable bequests. Another possibility is that this pattern of charitable giving reflects wealthy women's socio-economic role at this time. Women did not have many opportunities to pursue careers in business and often directed their interests towards charitable activities instead. Their estate plans might reflect this involvement. Tabulation by sex and marital status reveals that regardless of marital status, a higher percentage of women donate to charities than do men. From 1925-45 (years for which data on marital status is available), 11.2 percent of married males and 12.7 percent of married females, 21.1 percent of widowed males and 24.8 percent of widowed females, and 28.0 percent of single males and 40.5 percent of single females left bequests to charity. Figure 4 shows how some demographic characteristics of charitable donors compare to those of all decedents.

While women account for 43 percent of charitable donors, their bequests total to only about 37 percent of total bequests made between 1916 and 1945. Average bequests from women are smaller than those from men, probably because their total gross estates generally are smaller. The average gross estate of male donors was more than $481,000, about 50 percent higher than the average gross estate for female donors, which was less than $318,000. Table 9 shows that married and single male donors gave a slightly larger percentage of their gross estates to charity than did married and single females, while widowed female donors contributed a larger percentage of their gross estates to charity than did widowed males.

The age of the decedent also is positively correlated with the size and number of charitable gifts. For example, between 1916 and 1945, 15 percent of decedents aged 60 to 69 and 24.2 percent of decedents aged 80 and over made charitable bequests. In addition, the average size of bequests and bequests as a percentage of gross estate also increased with the age of the decedent. This find-

TABLE 8

Charitable Deductions from Individual Income Tax Returns and Charitable Bequests, 1916-1945.

Years	Charitable Deductions from Income	Charitable Bequests: Number of Donors	Charitable Bequests: Total Bequests	Charitable Bequests: Average Bequest	Charitable Bequests: Average TGE of Donors
1916-1920	not available	3,429	$302,402	$88,189	$528,540
1921-1925	$2,403,719	9,915	522,710	52,719	388,183
1926-1930	2,507,771	9,176	885,817	96,536	726,777
1931-1935	1,542,473	9,402	638,316	67,892	413,065
1936-1940	2,487,392	14,437	749,279	51,900	303,341
1941-1945*	6,996,296	14,884	814,703	54,737	307,664

*Excludes charitable contributions of individuals who filed Form 1040A for 1941 to 1943 and those of individuals who used the standard deduction in 1944 and 1945.

Dollar values for charitable deductions from income and total charitable bequests are in thousands of dollars.

ing is surprising because older donors generally did not have larger gross estates than younger donors. Like female and unmarried wealth-holders, older wealth-holders may have fewer dependents and financial obligations and therefore may be better able to make bequests to charities; they also have more time to make estate plans.

As would be expected, wealthier decedents were more likely to leave bequests to charities. For example, between 1916 and 1945, only 17.3 percent of decedents with gross estates of $100,000 to $250,000, but 31.4 percent of decedents with $500,000 to $1 million, made charitable bequests. The average size of charitable bequests also varied significantly with the size of the decedent's estate with little variation in the percentage of the total gross estate donated. Donations averaged about 13 percent of gross estate regardless of the size of the estate except for millionaire donors, who contributed 17.5 percent of their total gross estates to charity.

The fact that wealthier decedents are more likely to contribute to charities largely explains why donors as a percentage of all decedents declined after peaking at 21.8 percent in 1926-30, as Figure 3 illustrates. During those years, the estate tax filing requirement was $100,000 and average gross estate was at its highest. An examination of just decedents with $100,000 or more shows that the percentage who made charitable bequests did not decrease, except for 1941-45. From 1926-30, 22.9 percent made charitable bequests; from 1931-35, 23.5 percent made charitable bequests; from 1936-40, 24.8 percent made charitable bequests and from 1941-45, 21.9 percent made charitable bequests.

Conclusions

During the first 30 years of the federal estate tax, the number of wealthy decedents generally increased. The age at death of these wealth-holders increased too and a larger percentage of them were women.

After the Great Depression, the number of decedents with $100,000 or more resumed its upward climb, as did the total gross estate reported in each year. Average total gross estate, however, continued to fall. The distribution of wealth had changed: a larger number of people had estates worth more than $100,000, but a smaller portion of these people were extremely wealthy.

Between 1916 and 1945, 16.5 percent of all decedents made charitable bequests. Women were more likely to donate a portion of their estates to charity than men. The tendency to make charitable bequests also was correlated with marital status, age, and size of total gross estate. The percentage of all decedents who made charitable bequests increased until 1926-30 and decreased thereafter. This decrease was due primarily to a decrease in the filing requirement; the percentage of decedents with $100,000 dollars or more who made charitable bequests did not decrease until 1941-45.

The next article in this series will include further analyses of the data for 1916 to 1945. Regional variations, types of assets held by moderately wealthy decedents and estate taxes are some of the topics that will be discussed. The next installment also will describe what a sample of estate planners have to say about these data.

This research is conducted under the supervision of Dr. Fritz Scheuren, director, Statistics of Income Division.

The authors welcome questions or comments regarding this research and can be reached at the Internal Revenue Service, Statistics of Income Division, 1111 Constitution Avenue, N.W. Washington, DC 20224. The authors wish to thank the readers of TRUSTS AND ESTATES who provided comments on the first article in this series, particularly David Rosen and others who suggested that charitable bequests should be studied. □

FOOTNOTES

1. These data are subject to Federal disclosure regulations which guarantee that no identifying information will be made public. IRS employees are committed to safeguarding the privacy of individuals included in the data base.

2. Bruchey, Stuart, *The Wealth of the Nation*, Harper and Row New York 1988; pp. 157-163.

3. Including all dececents in a comparison of average gross estate is not valid for these years be-

(Continued on page 68)

TABLE 9

Summary of Charitable Bequests by Donor Characteristics, 1916-1945

Characteristic	Number of Donors	*Percent who were donors	*Average Bequest	*Percent of TGE Donated
All Donors	61,243	16.5%	$83,897	15.5%
Sex and Marital Status:				
Married Men	14,373	11.2	58,933	10.9
Widowed Men	8,291	21.1	65,279	15.8
Single Men	5,582	28.0	114,208	27.7
Married Women	2,404	12.7	38,457	9.2
Widowed Women	14,009	24.8	55,363	16.9
Single Women	5,541	40.5	65,818	26.1
Age:				
Under 60 Years	6,728	9.8	48,656	10.6
60 Under 70 Years	12,953	15.0	62,420	14.6
70 Under 80 Years	20,706	19.8	69,332	16.4
80 Years and Over	16,324	24.2	70,517	17.5
Age Unknown	4,532	10.4	40,036	15.4
Size of Total Gross Estate:				
Under $60,000	7,498	10.3	6,429	13.1
$60,000 under $100,000	13,484	12.3	10,017	12.8
$100,000 under $250,000	21,273	17.3	20,516	13.1
$250,000 under $500,000	9,249	24.2	46,624	13.3
$500,000 under $1,000,000	5,273	31.4	94,314	13.5
$1,000,000 and Over	4,486	42.1	527,233	17.5

*The percent who were donors is the number of donors with that characteristic (e.g., married men) divided by the number of decedents with that characteristic. The average bequest is the total charitable bequests of the group divided by the number of donors in the group. The percent of TGE donated is the total charitable bequests of the group divided by the aggregate total gross estate of the donors in the group, multiplied by 100.

**In addition to these decedents, there were 599 decedents who were separated or divorced, 10,191 decedents for whom marital status is unknown and 103 decedents for whom gender is unknown. Marital status was not present on the federal estate tax return until December 1924; age was not present until August 1918.

cause some of the fluctuations in the average gross estate are due to changes in the estate tax filing requirement. When the filing requirement is lowered, as it was in 1932 and 1935, the number of returns filed will increase and the value of the average total gross estate will decrease, *ceteris paribus*. When the filing requirement is raised, as it was in 1926 and 1942, the average total gross estate will increase. A look at the average gross estate of individuals with assets totaling $100,000 or more (the portion of the wealth distribution consistently subject to the estate tax), however, reveals fluctuations in the number and average size of estates similar to those seen for the overall wealthholder group. Thus, Table 3 reveals that not all of the variation in the number of returns and the size of estates is attributable to changes in the filing requirement. Some of these fluctuations are due to real changes in the size and distribution of wealth.

4. Bruchey, op. cit., pp. 174-175.

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the surviving spouse may be given a limited power of withdrawal during life, as well as a special power of appointment at death, to provide greater flexibility for the spouse and family, without disqualifying the trust as QTIP.

As a general principle, during the surviving spouse's lifetime, it would appear that the spouse cannot have a general power of appointment over any portion of a trust if that portion is to qualify for the marital deduction as QTIP. A general power of appointment includes a right of withdrawal that exceeds the "5 and 5" limitation under Sec. 2041(b)(2). If the spouse possessed such a power as of the inception of the trust, the trust arguably would not be QTIP, since it would fall under the provisions of Sec. 2056(b)(5). Also, the spouse cannot have a special power of appointment during life, since that would permit the spouse to appoint property to third parties. However, the surviving spouse may possess a limited power to withdraw property from the trust that falls within the "5 and 5" limitation (i.e., a noncumulative annual right to withdraw no more than the greater of $5,000 or 5 percent of the value of the trust property).

Similarly, at death the surviving spouse cannot possess a general power of appointment over the trust, or the trust would appear to meet the requirements of Sec. 2056(b)(5) rather than (b)(7). However, the spouse may be given a special testamentary power of appointment exercisable in favor of anyone other than the spouse, the spouse's estate, or the creditors of either.

Some planners give the surviving spouse under a QTIP trust a full power of withdrawal that becomes effective only if the spouse survives the decedent by a certain amount of time, such as 30 days. Because the spouse does not possess this power as of the decedent's death, the requirements of Sec. 2056(b)(7) are apparently met. However, granting the surviving spouse such a power would appear to prevent the decedent's executor from gaining an advantage by making a partial QTIP election. Because all of the trust property will be included in the surviving spouse's estate at death if the spouse survives the necessary amount of time, making a partial election could cause some of the trust property to be taxable in both spouse's estates.

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